

- a) When her team took a Star Wars-themed personality test, the Claimant was characterised by a colleague as Darth Vader (the **Darth Vader Incident**); and
 - b) The Respondent refused to allow her to retract her resignation.
4. The parties were encouraged to agree remedy between them, but have been unable to do so.

The hearing

5. The Respondent was represented in the hearing by Mr P Smith, Counsel. The Claimant represented herself.
6. The parties had agreed a hearing bundle of 636 pages. However, it became apparent at the outset of the hearing that the Claimant had revised her Schedule of Loss in July 2024, but she had done so in connection with some 'without prejudice' correspondence. The Claimant confirmed that she wanted that revised Schedule of Loss (not itself a 'without prejudice' communication) to be added to the Bundle, and that was done.
7. The Respondent also asked for three calculations of net earnings based on the weekly pay for a full time person working in the role the Claimant had been performing in the tax years subsequent to the termination of her employment to be admitted into evidence.
8. Neither party objected to the admission of these documents, and they were plainly relevant to the issues, and so the Tribunal granted permission for those 7 additional pages to be added to the Bundle.
9. Witness statements were proffered by four witnesses:
 - a) The Claimant;
 - b) Andrew Peake, the Claimant's partner;
 - c) Robert Nimmo, a friend of the Claimant's; and
 - d) Leanne Leech – a Pay Support Deputy Manager within the Respondent's organisation.
10. Each of the Respondent and the Claimant made submissions in support of their respective positions.

The parties' respective positions

11. In her revised Schedule of Loss the Claimant sought an award for:
 - a) Loss of net earnings to the date of that Schedule in the sum of £109,938.46;
 - b) Future losses from July 2024 to this remedy hearing of £49,387.84;
 - c) Compensation for injury to feelings of £37,500; and

- d) An ACAS uplift of 25%.
12. The Respondent's Counter Schedule of Loss posited that:
- a) The first detriment, pertaining to the Darth Vader Incident, should be responded to with an injury to feelings award of £900 only. The Respondent contended that no financial losses were suffered by the Claimant in relation to this incident;
 - b) The second detriment, refusing to permit the Claimant to rescind her resignation, did result in financial losses, but the Respondent contended that, in the hypothetical scenario where the Claimant had been permitted to rescind her resignation she would have resigned within one month in any event, due to external pressures and the changed ways of working. The Respondent calculated the net salary and value of employer pension contributions for that one month period as amounting to £2,545.85;
 - c) The second detriment again caused limited injury to the Claimant's feelings and should result in an award of compensation of £900; and
 - d) There should be no ACAS uplift.

Facts

13. The Claimant's mother has suffered from dementia for some time preceding the termination of the Claimant's employment with the Respondent. The Claimant openly discussed the difficulties associated with caring for her mother and her mother's partner with her line managers.
14. The Darth Vader Incident occurred on 18 August 2021.
15. The Claimant resigned on 17 September 2021. The Claimant's resignation letter said: "*Due to personal circumstances I feel that I am unable to continue in my role as Training and Practice Supervisor and I know that there are plenty of people that would like to given the opportunity waiting in the wings*".
16. The Claimant's mother's care needs fluctuated, but the Claimant's evidence was that at the time of her resignation she was undertaking about 30 hours a week of unpaid care for her mother.
17. During her notice period, on 8 October 2021 the Claimant sought to retract her resignation by email and WhatsApp message to a senior colleague, Amanda Dee:

"Hi Amanda

Would it be possible to withdraw my resignation and look at other options such as reducing my hours or flexible working? I have been too sad at the prospect of giving it all up, and too panicky about the prospect of not having an income! This week I have realised that I do still have something to offer NHSBT and having spent the week saying goodbye to old colleagues and learners that I have trained,

I'm not ready to walk away, plus I don't want to let our team down when we are about to face new challenges."

18. The Respondent refused to allow the Claimant to retract her grievance, and informed her of this on the same day (8 October 2021).
19. The Claimant raised a formal grievance on 12 October 2021. The grievance was not confined to the Respondent's refusal to permit her to retract her resignation, but covered other matters such as:
 - a) Allegations of discrimination;
 - b) The changes made to the Claimant's role;
 - c) The Respondent's response to the difficulties the Claimant was facing in her personal life, including her own health and that of her mother; and
 - d) The numerous change in line manager she had experienced.
20. The Claimant's employment terminated on 17 October 2021.
21. The Claimant's formal grievance outcome was delivered on 20 December 2021 – it was found not to have been made out.
22. The Claimant presented her Claim Form on 13 January 2022.
23. The Claimant appealed the outcome of her formal grievance, and the appeal outcome was delivered on 15 February 2022.
24. On 8 April 2022, the Claimant began to be paid for around 20 hours a week of the care she provided to her mother, at the rate of £250 a week.
25. On 16 June 2023, the Claimant's mother went into residential care, and the Claimant stopped being paid for care services provided to her.
26. While the Claimant said that she started looking for a new job after the grievance appeal outcome in February 2022, the first evidence of the Claimant applying for another job was May 2024.
27. The Claimant applied for, and was interviewed for a role as an estate agent, both in August 2024, but was unsuccessful in that application.
28. The Claimant has not undertaken any paid work, besides the paid care provided to her mother, since her employment with the Respondent ended.

Law

Protected disclosure detriment remedy: heads of compensation

29. Section 49 of the 1996 Act provides that:

"(1) Where an employment tribunal finds a complaint [of, among other matters, protected disclosure detriment] well-founded, the tribunal—

- (a) **shall** make a declaration to that effect, and
- (b) **may** make an award of compensation to be paid by the employer to the complainant in respect of the act or failure to act to which the complaint relates” (emphasis added).
30. The EAT has determined that it is appropriate to adopt the same approach to compensation in protected disclosure detriment complaints as it is for discrimination complaints (*Virgo Fidelis Senior School v Boyle* [2004] ICR 1210).
31. This means that there are three potential heads of compensation for protected disclosure detriment:
- a) Loss;
 - b) Injury to feelings (which may include aggravated damages where appropriate); and
 - c) Personal injury.
32. In the case of protected disclosure detriment, pursuant to section 49(2):
- “the amount of the compensation awarded shall be such as the tribunal considers just and equitable in all the circumstances having regard to—*
- (a) the infringement to which the complaint relates, and*
 - (b) any loss which is attributable to the act, or failure to act, which infringed the complainant's right.”*
33. Section 49(2)(a) obliges the tribunal to have regard to “*the infringement to which the complaint relates*”, but the aim is to compensate not to punish. Having regard to the infringement means having regard to the nature of the complaint when assessing the resultant loss, for example, because the more serious the infringement, the more likely it is that the claimant’s feelings have been injured (*Virgo*).
34. The task for the Tribunal, if an award of compensation is appropriate, is to assess:
- a) The degree to which the claimant’s feelings have been injured by the protected disclosure detriment, i.e., the effect of the detrimental act upon the particular claimant (*Eddie Stobart Ltd v Graham* [2025] EAT 14), not the gravity of the acts of the respondent (see *Komeng v Creative Support Ltd* UKEAT/0275/18/JOJ); and
 - b) The financial loss which the detriment occasioned.

Compensation for injury to feelings

35. As described in the case of *Vento v Chief Constable of West Yorkshire Police (No. 2)* [2002] EWCA Civ 1871:

“An injury to feelings award encompasses subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress and depression.”

36. There has to be some evidence of injury to feelings before an award could be made to compensate for that injury (*Ministry of Defence v Cannock* [1994] IRLR 509), and the burden of demonstrating that injury and the degree of it sits with the claimant (*Graham*).

37. The questions for a tribunal are:

a) *Has the claimant proven with evidence that they have suffered an injury to feelings?*

In most cases, this will rest on the tribunal's assessment of the claimant's own words of how the unlawful treatment made them feel. Tribunals should take claimants as they find them, considering whether their individual circumstances make them more or less vulnerable to upset. Again, the focus is on the effect on the individual, not the heinousness of the respondent's conduct.

b) *Was the protected disclosure detriment the cause of that injury?*

c) *What level of award appropriately compensates the injury, without punishing the respondent?*

If the claimant has satisfied the tribunal that they have suffered injury, but there is a dearth of evidence as to the degree of that injury, the tribunal may consider it appropriate to draw an inference from other evidence so as to assess the degree of injury.

38. *“When assessing compensation, [Tribunals] should keep a sense of due proportion. This involves looking at the individual components of any award and then looking at the total to make sure that the total seems a sensible.”*

(HM Prison Service v Johnson [1997] IRLR 162 and *Ministry of Defence v Cannock* [1994] IRLR 509)

39. The EAT in the *Johnson* case summarised the legal principles relevant to attributing a value to an injury to feelings (in that context, as occasioned by unlawful discrimination) as follows:

a) Awards for injury to feelings are compensatory. They should be just to both parties. They should compensate fully without punishing the tortfeasor. Feelings of indignation at the tortfeasor's conduct should not be allowed to inflate the award;

b) Awards should not be too low, as that would diminish respect for the policy of the legislation, but nor should they be excessive;

c) Awards should bear some broad general similarity to the range of awards in personal injury cases;

- d) In exercising their discretion in assessing a sum, tribunals should remind themselves of the value in everyday life of the sum they have in mind. This may be done by reference to purchasing power or by reference to earnings; and
 - e) Tribunals should bear in mind the need for public respect for the level of awards made.
40. Some guidance as to degree of injury relative to the range of degrees of injury seen by the Employment Tribunal is provided by the Presidential Guidance entitled “*Employment Tribunal awards for injury to feelings and psychiatric injury following De Souza v Vinci Constructions (UK) Ltd [2017] EWCA Civ 879*” from 5 September 2017, as supplemented by annual addenda thereafter. The upshot of those documents is that they set out “bands” of injury to feelings, and value ranges of compensation attaching to those bands. For a Claim Form presented on 13 January 2022, the bands are:
- a) The lower band (less serious cases): £900 to £9,100;
 - b) The middle band (cases that do not merit an award in the upper band): £9,100 to £27,400;
 - c) The upper band (most serious cases): £27,400 to £45,600; and
 - d) Exceptional cases: sums exceeding £45,600.
41. These “Vento bands” are designed to ensure a measure of consistency and fairness in the way in which tribunals endeavour to transpose the degree of injury to feelings into monetary terms.
42. As the EAT noted in the *Graham* case, so long as the tribunal does not lose sight of the fact that it is compensating a claimant for the injury suffered rather than the manner of the protected disclosure detriment, the latter can be a useful guide to inferring the former when evidence is otherwise sparse. In other words, the behaviour of the respondent in treating the claimant detrimentally on the grounds of one or more protected disclosures may provide a means by which the tribunal can properly draw an inference of secondary fact as to the degree of injury suffered by a claimant when there is little else to go on.
43. Other considerations that may be relevant to inferring the degree of injury on a claimant include:
- a) The duration of the injury to the claimant’s feelings (*Graham*);
 - b) The effect of the injury on the claimant’s past, current and future work (*Graham*);
 - c) The effect of the injury on the claimant's personal life or quality of life (*Graham*);

- d) Whether the detriment can be described as “*overt*”, as that is more likely to cause distress and humiliation (*Taylor v XLN Telecom Ltd* [2010] IRLR 499);
- e) Whether the detriment was played out in front of colleagues or others (*Graham*);
- f) If the detriment is manifested in a way that depends on an asymmetry of power, influence or information, for example if it is expressed in disciplinary threats that create worry, or in exclusion which causes isolation (*Graham*); and
- g) The timing of the detriment, which may add to its seriousness or impose additional stress. Examples from the discrimination context include:
 - (i) An acknowledgement that pregnancy discrimination may create stress for an expectant mother, or detract from the joy associated with the birth (*Gilbank v Miles* [2006] IRLR 538).
 - (ii) Age discrimination affecting a claimant approaching retirement may taint their perception of their career and the worth of their working life.

Apportionment

44. Where there is more than one cause for an injury to the claimant’s feelings, not all of which the respondent needs to answer in compensation (for example, where a claimant’s feelings were injured by a fair dismissal for which no compensation should be paid as well as a protected disclosure detriment which may attract an award of compensation), the tribunal must ask itself:
- a) Whether the respondent’s breach of duty had materially contributed to the harm; and
 - b) If so, what portion of that harm is attributable to the respondent’s breach (*Thaine v London School of Economics* [2010] ICR 1422).
45. The exercise of apportionment may not always be straightforward, and in such cases the tribunal should identify a rational basis on which the *harm suffered* (not the contribution) can be apportioned between a part caused by the employer’s wrong and a part which is not caused by that (*BAE Systems (Operations) Ltd v Konczak* [2017] IRLR 893). If the injury is truly indivisible, the claimant should be compensated for the whole injury.

Potential adjustments

46. Compensation for detriment on the grounds of having made a protected disclosure may be adjusted in three ways:

- a) Where the disclosure was not made in good faith and it is just and equitable in all the circumstances to do so, the tribunal *may* reduce any award it makes to the claimant by no more than 25% (section 49(6A));
- b) Where the claimant caused or contributed to the respondent's act or failure to act, the tribunal *shall* reduce the amount of compensation by such proportion as it considers just and equitable (section 49(5)); and/or
- c) Where there has been a failure to follow the ACAS Code (section 207A and Schedule A2 of the Trade Union and Labour Relations (Consolidation) Act 1992).

Our findings

47. There are several factual matters which the Tribunal had to decide so as to determine the appropriate remedy, and those are organised by the questions set out below.

Matters relevant to financial loss

Was there any financial loss incurred by the Claimant flowing from the Darth Vader Incident?

48. We find that there was not. The Claimant was still paid in full following that incident. The Claimant has not argued otherwise.

Had the Claimant been permitted by the Respondent to retract her resignation, what would her hours of work have been?

49. The Claimant says that she would have continued to work 37 hours per week, and that she would have expected the Respondent to accommodate her request to work flexibly.

50. The Respondent says that there is clear evidence – in the terms in which the Claimant sought to retract her resignation – that the Claimant would only have returned to work if her working hours had lessened, due to her caring responsibilities for her mother.

51. We prefer the Respondent's position on this disputed point. It is clear that the Claimant had felt overwhelmed by trying to manage work and her caring responsibilities for her mother, and that she was spending considerable time caring for her mother (overnight and at weekends as well as during the week). We find that the Claimant would have sought and would have been permitted to reduce her hours to three fifths of her full-time hours.

Had the Claimant been permitted by the Respondent to retract her resignation, would she have subsequently resigned anyway?

52. The Respondent posits that the Claimant would have resigned anyway, due to the increasing care needs of her mother, and the fact that her mother could pay her for those hours.
53. The Claimant says that work was her respite from caring for her mother, and that she would have hired a carer if her mother's care needs and the Claimant continuing in work became incompatible. She acknowledged that she would have retired at the age of 60 in any event.
54. The Tribunal notes that the Claimant's mother went into residential care in June 2023, which shows that the Claimant's mother's care needs increased as her dementia worsened. We note that there was clear evidence that the Claimant had been contemplating early retirement in the Spring/Summer of 2021, and we consider that the Claimant would have continued to think about that as the difficulties of managing work and her mother increased. As we find - in this hypothetical scenario where the Respondent permitted her to retract her resignation and work three fifths of a full-time role - the Claimant would have continued in work, she would have continued to have accrue pension benefits (albeit at a lesser rate than when she worked full-time hours). We consider that, as time went on and her mother's care needs increased, and as her mother started to pay the Claimant for some of the care the Claimant was providing in April 2022, we consider the thoughts of resigning sooner than her planned age of 60 would have increased.
55. We find that the Claimant would have resigned and brought her employment to an end one year later than it in fact did, so that her employment would have ended in any event on 15 October 2022.

Was there an unreasonable failure on the part of the Claimant to mitigate the financial losses she incurred from the employer's action in refusing to permit her to retract her resignation?

56. The Claimant says that she was looking for jobs from February 2022 when she received the outcome of her grievance appeal, but the difficulties with her mental health, with her mother, the loss of confidence she felt following her treatment by the Respondent, and the pressures of being a litigant-in-person in bringing these proceedings, meant that she did not apply for any jobs at that time.
57. The Respondent says that, if the Claimant was capable of working and managing her mother's care as the Claimant says she was, she was capable of applying for other jobs, and that her failure to do so amounts to an unreasonable failure to mitigate her loss. The Respondent acknowledges that the Claimant did mitigate part of her loss when she became her mother's paid carer in April 2022.
58. The Tribunal finds that there was no unreasonable failure to mitigate until the Claimant's mother went into residential care. At that point – 16 June 2023 – the Claimant should have taken active steps to seek new employment and she failed to do so.

59. However, given we find that she would have resigned in any event in October 2022, this has no bearing on her financial losses.

Matters relevant to compensation for injury to feelings

What was the degree of injury to her feelings relative to the “Vento” bands?

60. The Tribunal began by reminding itself that the purpose of an injury to feelings award is to compensate for the effect of the injury to the Claimant’s feelings, not to punish the Respondent, and otherwise to remind itself of the principles emerging from the *Johnson* case cited above.
61. The Claimant says that she was significantly injured by the Respondent’s actions, and she places the degree of that injury to feelings at the top of the middle “Vento” band of injury to feelings. She points to the counselling sessions she had in the period after her employment ended, and the recommendation that she continue in counselling (albeit that she did not, in fact, do so, as she would have had to pay for that counselling).
62. The Respondent acknowledges that the Claimant’s feelings were injured, but says that the degree of injury to the Claimant’s feelings was considerably less than that, as shown by the fact that her medical records around the time of her resignation and the grievance outcome show she was seeing her GP for various things, but she did not specifically cite her resignation or difficulties surrounding the refusal to permit her to retract it.
63. The Tribunal finds that there was no significant injury to the Claimant’s feelings caused by the Darth Vader Incident. While the evidence from the Claimant about the degree of injury caused by this detriment was that it upset her, and that that upset continued to play on her mind when the Respondent refused to allow her to rescind her resignation, it is clear that the upset from the Darth Vader Incident itself was fleeting, as she subsequently confided in the person she considered responsible for that incident about her upset about not being permitted to rescind her resignation (Amanda Harber). The Tribunal noted that fact at the liability hearing as significant when we concluded that the Darth Vader Incident was not an operative one on the Claimant’s decision to resign.
64. However, the Tribunal finds that, overall, the injury to the Claimant’s feelings caused by both incidents was more than the less serious cases.
- a) The injury to her feelings caused by the Respondent’s refusal to allow her to retract her resignation at a time when they were looking to recruit lots of Donors Carers, and asking people who had left to return to the Respondent, was more than the less serious cases.
 - b) The Claimant’s distress, which in her evidence to the Tribunal was and continues to be considerable, is accepted. Not only was the Respondent unwilling to allow her to retract her resignation, but that hurt came at her

point in life that meant it tainted her perception of her career and the value she gave to a job she cared about.

65. The Tribunal judges this injury to be not of the most serious kind, but was more than the less serious kind.
66. We find this while acknowledging that there were other things going on in the Claimant's life that were extremely serious that contributed to the undoubted high level of distress she was feeling – notably the irremediable deterioration of her mother's health, and the dispute with her brother over her mother's finances which involved the police and social services. From one perspective these other matters might indicate that the degree of injury to the Claimant's feelings attributable to the Respondent would be less significant when those weighty family issues that were troubling the Claimant, but we also take note of the Claimant's evidence that work had been a kind of respite for the Claimant for some of the period of her mother's decline.
67. Whilst acknowledging there is little evidence besides the Claimant's description to the Tribunal, we think the portion of the injury to the Claimant's feelings that was attributable to the protected disclosure detriments by the Respondent is rightly in the middle "Vento" band.
68. We find that noting that the Claimant needed counselling, and received some counselling on the NHS. She was recommended to continue with that treatment, but she chose not to do so, which was a reflection not just of her financial circumstances but also of the fact that she could manage without further counselling.
69. We have taken into account the Claimant's pre-existing mental health difficulties in reaching this view, noting that those difficulties support the Claimant's position about the distress she receives. The Claimant's pre-existing health condition has no impact on the Respondent's responsibility for the degree of injury the Claimant suffered (or how that 'speaks' in compensation), as the Respondent 'takes its victim as it finds them'.
70. Taking all these matters into consideration, we conclude that the middle "Vento" band is the right one. Some of the Claimant's distress was attributable to what was going on with her family situation (*Thaine*), but we assess the degree of injury to feelings caused by the protected disclosure detriment of refusing to allow her to rescind her resignation at £12,000 – part-way up the middle band.

Adjustments

Was there an unreasonable failure to comply with the ACAS Code of Practice in relation to the Claimant's grievance?

71. The Claimant says that the manner in which her grievance was dealt with (she says no investigation was made into the substance of her grievance), and the time it took to be determined, amounted to an unreasonable failure on the part of

the Respondent to comply with the ACAS Code, and she seeks a 25% uplift in the compensation awarded to her.

72. The Respondent denies this, and says there was no unreasonable failure, and there should be no adjustment to any compensation awarded to the Claimant.
73. The Tribunal agrees with the Respondent.
- a) The grievance meeting on 16 December 2021 show that numerous questions were asked of the Claimant as part of the decision-maker's enquiries into the matters complained of. The grievance appeal panel also asked numerous questions at the appeal hearing, enquiring into the matters complained of. The Claimant's grievance was investigated.
 - b) Two months and a week to hear and determine a grievance which involved the amount of detail this one did was not unreasonable, particularly at a time when the Respondent was still dealing with the tremendous difficulties that flowed from the Covid-19 pandemic. Four months for the grievance to be heard, and for the appeal outcome to be delivered, is also not unreasonable in that context.
74. We are not satisfied that there was an unreasonable failure to comply with the ACAS Code.

Should any other adjustments be made?

75. There was no argument made by the Respondent that the Claimant had caused or contributed to the protected disclosure detriments she suffered, and nor was there any argument that the Claimant made protected disclosures other than in good faith – so no adjustments are made to our value of the Claimant's financial losses and her compensation for injury to feelings.

Conclusions

Financial loss

76. We find that the financial losses the Claimant incurred were:
- a) The loss of her:
 - (i) Net salary and net HCAS payments; and
 - (ii) Pension contributions (employee and employer pension contributions),calculated on the basis of three fifths of full time earnings, for the period 16 October 2021 to 7 April 2022;
 - b) The loss of her:
 - (i) Net salary and net HCAS payments, less the £250 per week she was paid by her mother for the care services the Claimant provided to her; and

(ii) Pension contributions,

calculated on the basis of three fifths of full time earnings, for the period 8 April 2022 to 15 October 2022.

77. After some engagement with the parties so that the Tribunal could understand the appropriate net calculations of these amounts followed our determination of the factual matters pertaining to financial loss, we find that the financial losses the Claimant suffered amounted to £16,989.61.

Injury to feelings

78. We find that the injury to the Claimant's feelings, assessed in accordance with the Fourth Addendum to the relevant Presidential Guidance, was £12,000 – at the lower end of the middle "Vento" band.

Summary

79. In the oral remedy hearing, we Ordered that the Respondent pay to the Claimant the sum of **£28,989.61** in aggregate.

Employment Judge Ramsden

Date 31 March 2025

Judgment sent to parties on:

Date: 14th January 2026

For the Tribunal Office

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